

DRAFT OPERATING CONTRACT

BETWEEN

THE CANADIAN SPACE AGENCY

AND

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OPERATING CONTRACT EXECUTED IN DUPLICATE THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_ 2014.

**Between:**     **THE CANADIAN SPACE AGENCY**, an agency of the Government of  
Canada, represented by the Minister of Industry

(Hereinafter "the Minister" or "the Agency")

**And:**           \_\_\_\_\_, a federally or provincially  
incorporated entity having its head office at

\_\_\_\_\_  
(Hereinafter "the Operator")

(Hereinafter, individually "the Party" and collectively "the Parties").

Which Parties, preliminary to the provisions of the present Contract, declare as follows:

**WHEREAS** the Agency is responsible for the management of a building, located at  
6767 Route de l'Aéroport, City of Longueuil (Saint-Hubert District), Province of Quebec;

**WHEREAS** the Operator wishes to manage Work Areas as well as items and  
equipment in the Building with a view to providing Food Services to Agency workers  
and visitors, which are defined in Appendix A to this Contract; and

**WHEREAS** the Agency consents that the Operator provide the said Food Services to  
Agency workers and visitors, in accordance with the terms and conditions stipulated  
herein.

**CONSEQUENTLY, the Agency and the Operator agree as follows:**

## **Clause 1 – Interpretation**

- 1.1** Unless indicated otherwise by the context, the following definitions apply to the Contract:
- a) "Work Areas": facilities located on the ground floor of the Building and provided to the Operator by the Agency to operate Food Services, as described in Appendix B;
  - b) "Contract": this agreement binds the Parties, including all the documents listed in subclause 1.2 below;
  - c) "Building": the Building is located at 6767 Route de l'Aéroport, in the City of Longueuil (Saint-Hubert District), Province of Quebec;
  - d) "Food Services": food services for people working in the Building as well as visitors to the Agency, which services are more fully described in Appendix A;
  - e) "Common Areas ": entrances, vestibules, corridors, stairways, access roads and sidewalks, in the Building and on the surrounding property;

- 1.2** The following documents are an integral part of this Contract:

This Contract, including the Preamble  
Appendix A - Canadian Space Agency Request for Proposals dated ... 2014 (excluding appendices)  
Appendix B - List and plans of facilities provided by the Canadian Space Agency (including Appendix A of the Agency Request for Proposals dated ... 2014)  
Appendix C - List of items and equipment supplied by the Canadian Space Agency (constituting Appendix B of the Agency Request for Proposals dated ... 2014)  
Appendix D - Building cleaning – scope of work required (constituting Appendix B of the Agency Request for Proposals dated ... 2014)  
Appendix E - Operator's proposal dated ... 2014  
Appendix F - List of the Operator's materiel and mobile equipment

- 1.3** In the event of any conflict or incompatibility, the order of precedence for the documents that are part of the Contract is the following:

This Contract

Appendix A - Request for Proposals (excluding appendices)  
Appendix B - List and plans of facilities provided by the Canadian  
Space Agency  
Appendix C - List of items and equipment supplied by the Canadian  
Space Agency  
Appendix D - Building cleaning - scope of work required  
Other appendices

- 1.4 In this Contract, the headings serve solely as points of reference and shall not influence the scope, intent or interpretation of any provision thereof.
- 1.5 In every instance where the context of the present Contract requires or allows, the singular shall include the plural and the masculine shall include the feminine, where applicable.

### **Clause 2 – Food Services**

- 2.1 The Operator agrees to provide Agency personnel and visitors with Food Services as set out in Appendix A, and to fulfil all other obligations set out in the Contract diligently and professionally by using competent and qualified staff.

### **Clause 3 - Work Areas Available to Operator**

- 3.1 Subject to the other terms and conditions of the Contract, the Agency shall hereby make Work Areas available to the Operator so that the Operator can use them and provide Food Services, in addition to the other obligations set out in the Contract, but for no other purpose.

### **Clause 4 - Right of Access and Egress**

- 4.1 Subject to applicable statutes, regulations and policies of the Government of Canada, including those that are security related, the Operator shall have free access to the Work Areas described in Appendix B for himself, his employees, officers and agents, clients and guests, as well as the right to use the Common Areas during normal Building operating hours, i.e. from 7 a.m. to 6 p.m. on weekdays.
- 4.2 With the Agency's permission, which may not be withheld for no good reason, the Operator may from time to time be given access to Work Areas outside regular hours of operation for the Building, to carry out emergency or non-recurring work. In such case, the Operator shall reimburse the Agency for the actual costs incurred by the latter to allow such access and maintain

Building security outside regular hours of operation, to the exclusion however of any regular expenses that the Agency incurs to ensure Building security outside regular hours of operation. Specifically, no administrative costs are to be added to the actual costs by the Agency.

#### **Clause 5 - Loan of Items and Equipment**

- 5.1** For the term of the Contract, and in compliance with the *Public Property Loan Regulations* (SOR/92-745), the Agency shall loan the Operator the items and equipment listed and described in Appendix C.
- 5.2** The Operator, at its own expense, shall maintain the items and equipment loaned to the Operator under this Contract and ensure that they are clean and serviceable. The Agency may, at any time, inspect the items and equipment loaned to the Operator to determine their condition.
- 5.3** The Operator shall hold harmless Her Majesty in right of Canada, the Minister, the Agency and all their employees, officers and agents, and relieve them of any responsibility for any damage or loss, and for any claims that may be laid against them as a result of the possession or use by the Operator of the items and equipment loaned to the Operator under this Contract.

#### **Clause 6 – Payment**

- 6.1** The operator undertakes to pay to the Agency, for the duration of this contract, the following amounts:
- 6.2** The operator index base year, rent on (date of signature) of consumer prices published by Statistics Canada on the basis of the difference between the indices of reference of the month of (previous month).
- 6.3** All arrears in the payment of the amounts provided pursuant to subsection (6.2) of this Clause will compound interest calculated monthly, to the discount rate plus three percent (3%) and average as defined in the regulation on the interest and administrative charges (SOR 96/188), from the date due until the date of payment.

#### **Clause 7 – Term**

- 7.1** The Contract shall come into effect on the \_\_\_\_ day of \_\_\_\_\_ 2014, for an initial term of two (2) years (hereinafter referred to as the "Initial operating period"), unless it is terminated earlier in accordance with one of the provisions herein.





## **Clause 8 – Extension of Contract**

- 8.1** Not less than sixty (60) days prior to the termination date of the initial operating period or any period of extension agreed to, the Operator may request an extension from the Agency. The Agency may then, on condition that the Operator is not in default with respect to any of its obligations under the Contract, extend the Contract for three (3) consecutive periods of one (1) year each by means of notice in writing forwarded by the Agency to the Operator not less than thirty (30) days prior to the end of the initial operating period in the case of an initial extension period, and thirty (30) days prior to the end of the first extension period or any subsequent extension.

## **Clause 9 – Legal Status of Parties**

- 9.1** The Parties acknowledge and confirm that they are independent of one another and that nothing in the Contract shall be construed to constitute a partnership, joint venture or mandate between the Parties. Neither the Operator nor its employees are employees, agents or officers of the Agency and the Operator agrees to present themselves to third parties as a party that is independent of the Agency.
- 9.2** The Operator is required to make all employee deductions and payments required under the law, including Canada and Quebec Pension Plan payments, employment insurance, workers' compensation and income tax.

## **Clause 10 – Terms and Conditions**

- 10.1** The Operator undertakes:
- a) to pay the amounts specified in the Contract, on the dates and in the manner provided herein;
  - b) to tolerate no deterioration of the Work Areas other than that incurred through normal use;
  - c) to occupy and use the Work Areas only for the purpose of providing Food Services, and not to use, occupy or allow them to be used or occupied in whole or in part for any purpose other than that expressly provided in the Contract;
  - d) without limiting the generality or scope of paragraph (c) above, to refrain from committing or permitting the commission in the Work Areas, whether by act or omission, of any acts that could constitute a public or private nuisance or a breach of national security, or actions that are otherwise illegal or reprehensible;

- e) to refrain from making or authorizing any changes or additions of any kind to the Work Areas without prior consent in writing from the Agency;
- f) to comply with fire regulations in operating Food Services, and in particular to comply with applicable rules and instructions issued from time to time by the Agency and all applicable rules and orders issued by the Office of the Fire Commissioner of Canada;
- g) to provide the Agency with a list and description of the materiel and mobile equipment that it intends to install in the Work Areas, including a specification of the value that would be used as a basis for any settlement concerning damage to such property that may be charged to the Agency or its agents;
- h) to refrain from storing in the Work Areas inflammable materials that could increase the risk of fire, and explosives of all kinds, except those strictly necessary for Food Services operations;
- i) to refrain from signing any concession agreement in relation to Food Services without prior written authorization from the Agency;
- j) to allow the Agency, its officers or agents free access at all times to the Work Areas, in order to carry out inspections, whether explicitly provided for in the Contract or not, and where applicable, any repairs required, and to ensure that the terms and conditions of this Contract are being complied with, or for any other reasons;
- k) to pay, when due, the licences, fees and other similar charges and assessments that may be required in connection with the operation of the Work Areas on the understanding that the Building is considered "federal property" within the meaning of the *Payments in Lieu of Taxes Act* (R.S., 1985, c. M-13); and
- l) to for pay the installation and operating costs for any telephone lines that may be required.

## **Clause 11 – Indemnity Against Claims**

**11.1** The Operator shall hold harmless Her Majesty in right of Canada, the Minister, the Agency and all their employees, officers and agents, and relieve them of any responsibility for any damage or loss, of any claims, legal action or other proceedings with respect to an act or omission on the part of the Operator or its management, employees, officers and agents, as well as for

any action taken by the Agency to remedy an act or omission by the Operator when the claim, proceeding, remedy or action is attributable to:

- a) default on the part of the Operator in its obligations under the Contract;
- b) any activity carried on in the Work Areas or the immediate vicinity;
- c) any activity relating to use of the items and equipment; or
- d) operation of the Food Services.

**11.2** All charges and expenses attributable to a claim, proceeding, remedy or action under subclause 11.1 above, including lawyer's charges or fees, will be chargeable to the Operator.

**11.3** The Operator shall hold harmless Her Majesty in right of Canada, the Minister, the Agency and all their employees, officers and agents of any responsibility for damage caused to the Work Areas, and any losses of any kind that may result to the Operator, and waives any claims, proceedings, remedies or action against the Her Majesty the Queen in right of Canada, the Minister, the Agency and all their employees, officers and agents for such damage or loss, except through negligence by an employee, agent, officer, supplier or subcontractor of the Agency.

**11.4** Nothing in this clause releases the Agency from its liability for any damages attributable to its employees or agents acting in the performance of their duties.

## **Clause 12 – Insurance**

**12.1** The Operator shall take out and maintain in force, throughout the term of the Contract, the following insurance:

- a) third-party liability insurance protecting the Operator and the Agency against any claim for material damages and bodily injury or loss of life in the Work Areas or any area adjacent thereto and stemming from operation of the Food Services. The amount of this insurance shall be a minimum of **two million dollars (\$2,000,000.00)**;
- b) insurance protecting the Operator and the Agency relating to the civil liability incumbent on the Operator under the present Contract, for damage to or destruction of the Work Areas or the Building, whether such damage or destruction be caused by fire, explosion, smoke or leakage from fire protection equipment.

- 12.2** Such insurance policies as listed in subclause 12.1 above must include a clause stipulating that the insurer shall not cancel or modify the insurance without giving thirty (30) day's prior notice to the Agency by registered mail.
- 12.3** Any insurance required to be in force under the provisions of the present Contract shall be taken out with a company that is licensed under the laws of the Province of Quebec and whose regular business is insurance against the risks described in the Contract.
- 12.4** The Operator shall submit to the Agency certified copies of the insurance policies required on execution of the present Contract and at least fifteen (15) days prior to the commencement of any extension period.
- 12.5** The Operator shall not commit, or tolerate, any act inconsistent with or entailing cancellation of any insurance policy.

### **Clause 13 – Agency's Obligations**

- 13.1** The Agency agrees, subject to the applicable statutes, regulations and policies of the Government of Canada, including those pertaining to security, and other terms and conditions of the Contract, to permit users of Food Services and personnel responsible for the maintenance, repair and supply of these services, convenient access to the Work Areas for such services.
- 13.2** The Agency shall keep the Work Areas in good repair and, on reasonable prior notice from the Operator, shall expeditiously carry out required repairs with the care of a prudent and diligent administrator.
- 13.3** The Agency shall ensure that the Work Areas have sufficient electric power, assume the cost thereof and replace at its expense defective light bulbs; however, the Operator shall notify the Agency of any intention to install in the Work Areas materiel and items, including devices or machines, that consume or are likely to consume large amounts of electricity. In such instances, the Agency shall within fifteen (15) days issue a notice approving or refusing installation of such materiel or items.
- 13.4** The Agency shall heat, cool and illuminate the Work Areas in accordance with the comfort standards applied in other areas of the Building, and ensure that the Common Areas are well lit.
- 13.5** The Agency provides for waste collection at the refrigerated waste storage shed at least once weekly.

## **Clause 14 – No Guarantee**

- 14.1** The Operator acknowledges having examined the Work Areas prior to commencement of the Contract and accepts them as they are, and further acknowledges the absence of any undertaking, promise or statement on the part of the Agency:
- a) concerning the quality of safety of the Work Areas or of the items and equipment loaned to the Operator, apart from express stipulations under the Contract;
  - b) to the effect that the use of the Work Areas and the items or equipment loaned to the Operator will yield any particular results; or
  - c) concerning customer traffic for the Food Services.

## **Clause 15 – Default**

- 15.1** If the Operator should inform the Agency in writing that the Agency is in default regarding one of its obligations, and the Agency does not take remedial action within forty-eight (48) hours following receipt of the notice, or less if the default is likely to cause loss or damage to the Operator if not remedied within less than forty-eight (48) hours, then the Operator has the right, without further notice, to take appropriate action to remedy the default.
- 15.2** Without restricting the Operator's recourse in law, all reasonable expenditures paid for by the Operator under subclause 15.1 above shall be charged to the Agency, and where the latter fails to reimburse the charges when so requested, the Operator may deduct them from the amounts payable to the Agency under the other terms and conditions of the Contract.
- 15.3** If the Operator fails to pay all or part of an amount payable under one or other of the provisions of the Contract on time, or if the Operator is in default of one or other of its obligations under the Contract, the Agency may give the Operator notice in writing to remedy the default within the five (5) days following receipt of the notice.

## **Clause 16 – Termination**

- 16.1** Notwithstanding subclause 15.3 above, the Agency may terminate the Contract by means of a written notice to the Operator if one or other of the following occurs:
- a) if the Operator is declared bankrupt or becomes insolvent;

- b) if the Operator issues a postponement proposal or transfers its property to its creditors;
- c) if there is a receivership order or a receiver of the Operator's property is appointed, or if the Operator consents to such an order or appointment;
- d) if the Operator voluntarily files for bankruptcy or for a petition requesting a restructuring or an arrangement with creditors, or exercises a legislative provision to shelter it from recourse from creditors;
- e) if the Operator admits to the Agency that it is unable to pay its debts when they become due;
- f) if the Operator signs or attempts to sign a concession agreement in relation to Food Services without prior written authorization from the Agency;
- g) if the Operator assigns, transfers or encumbers, or attempts to assign, transfer or encumber the Contract in any way without the prior written authorization of the Agency;
- h) if for a contract default other than those listed in this paragraph, the Operator does not remedy the default within five (5) days following receipt of the notice duly sent in compliance with subclause 15.3 above.

**16.2** Each party may terminate the Contract at any time by submission of ninety (90) days' prior notice in writing to the other party.

**16.3** If, during the term of the Contract, the Work Areas are damaged or destroyed by fire or otherwise and rendered unserviceable in the opinion of the Operator, the Operator may declare by means of a written notice to the Agency that the Contract does not extend beyond the date of the damage; if, however, in the opinion of the Operator, and provided that the damage occurred other than through the fault of the Operator or its employees, subcontractors, agents or any other person or entity under the responsibility of the Operator, or as the result of default on the part of the Operator or one or other of its obligations as stipulated in the Contract, the damage is not such that the Work Areas are unserviceable, then the Operator has the option of deciding not to terminate the Contract on condition that the Agency immediately repair the Work Areas and make them serviceable for the Operator, in which case calculation of the amounts payable shall exclude the period of service interruption on a pro rated basis.

- 16.4** There is nothing in the Contract to restrict the right of the Agency, with respect to bankruptcy, insolvency or a receivership order, to make claims authorized by law or rule of law governing such proceedings.

### **Clause 17 – Obligations at End of Contract**

- 17.1** At the end of the Contract, whether through expiry, termination, mutual consent or any other reason, the Operator shall remove from the Work Areas all the materiel and mobile equipment owned by the Operator, and return to the Agency the Work Areas and the items and equipment listed in Appendix C, in good condition, with the exception of:
- a) normal wear; or
  - b) damage as provided in subclause 16.2 above, provided that the damage occurred other than through the fault of the Operator or its employees, subcontractors, agents or any other person or entity under the responsibility of the Operator, or as a result of default on the part of the Operator or one or other of its obligations as stipulated in the Contract.
- 17.2** In the event that the Operator cannot make the Work Areas or one or the other of the items or pieces of equipment listed in Appendix C serviceable in compliance with subclause 17.1 above, the Operator shall reimburse the Agency for all damages to the Work Areas and reimburse the Agency for the replacement value of any item or equipment that has been damaged, whether the damage was caused by the removal of the materiel and mobile equipment owned by the Operator, or as a result of any other cause.

### **Clause 18 – Notice**

- 18.1** When, under the terms of the Contract, one of the parties is required to give notice, notice shall be in writing and is only valid if delivered in person or sent by messenger, registered mail, fax or other electronic means that prints the notice, to the person and address mentioned in this clause. Notice is deemed to be effective on the day it is received at this address.
- 18.2** Notice to the Agency is to be sent to the person and address shown below:

Director, Security and Facilities  
Canadian Space Agency  
6767 Route de l'Aéroport  
Longueuil, Quebec



J3Y 8Y9

Fax: 450-926-4894

**18.3** Notices for the Operator are to be sent to the person and address shown below:

[Title]

[Operator's name]

[Address]

### **Clause 19 – Acts and Regulations**

**19.1** The Operator shall comply with all the acts, orders and regulations of the competent authorities that apply to the Work Areas, their use and occupation.

### **Clause 20 – Signs**

**20.1** The Operator shall not build, install, inscribe, or affix any sign, inscription or poster, whether indoors, outdoors or above the Work Areas, including the exterior surface of windows or glass doors, without first obtaining prior written approval from the Agency in each instance.

### **Clause 21 – Disputes**

**21.1** Disputes of all kinds relating to the Contract are governed by this clause.

**21.2** The dispute shall first be submitted in the form of a notice by the Operator to the Agency Director, Security and Facilities, who shall reach a decision and give notice thereof within the following fifteen (15) days.

**21.3** The decision of the Director, Security and Facilities under subclause 21.2 above shall be final and binding on the parties on the thirty (30) days following receipt of the decision, unless the Operator first sends a notice to the Agency indicating that it is appealing to the Director General, Corporate Services of the Agency, who notifies the Operator of the decision taken within fifteen (15) days following receipt of the notice of appeal.

**21.4** If not satisfied with the decision of the Agency's Director General, Corporate Services under subclause 21.3 above, the Operator may take any measure, and exercise any recourses and rights available failing this clause.

### **Clause 22 – Minister's Rights**

**22.1** The rights or powers conferred upon the Agency and the Minister by law and the Contract are cumulative and not mutually exclusive.

**Clause 23 – Successors and Assigns**

**23.1** The Contract applies to and binds authorized successors and assigns of the Agency and the Operator.

**Clause 24 – Transfer**

**24.1** The Operator shall not, without prior written authorization from the Agency, transfer, assign or encumber the Contract in any way. In addition to giving rise to the application of paragraph (g) of subclause 16.1 above, any supposed assignment, transfer or encumbrance of the Contract, in whole or in part, that is not duly authorized first by the Agency is null and void.

**24.2** No assignment, even when duly authorized by the Agency, shall release the Operator from the obligations stemming from the Contract or confer obligations upon the Agency or the Minister, unless previously agreed to in writing.

**Clause 25 – Members of the House of Commons**

**25.1** No member of the House of Commons shall participate in the present Contract or benefit therefrom.

**Clause 26 – Bribes**

**26.1** The Operator declares and attests that:

- a) no bribe, gift, benefit or other advantage has been nor will be given, promised or offered, whether directly or indirectly, to an employee or a representative of the Government of Canada or to a member of that person's family, with the intent of influencing the awarding of the Contract;
- b) with the exception of its sales representatives responsible for obtaining contracts in good faith, has employed no one to promote the awarding of the Contract, on payment of a commission, percentage or any other personal remuneration.

### **Clause 27 – Conflicts of Interest**

**27.1** The Operator agrees that it is an express condition of the Contract that any person who does not comply with the provisions of the Conflict of Interest Code for Public Office Holders as it applies to conflict of interest and post-employment, or with the Values and Ethics Code for the Public Service may not benefit directly from the Contract.

### **Clause 28 – Completeness of Contract**

**28.1** The Contract constitutes the totality of the agreement between the parties for the purpose at hand and it replaces any negotiation, communication or subsequent agreement pertaining to it between the parties, whether verbally or in writing, unless incorporated by referral to the Contract. Only the commitments, conditions, statements and terms and conditions in the Contract are a part of the Contract.

### **Clause 29 – Capacity and Authorization**

- 29.1** The Operator hereby declares and attests that on the date the Contract comes into force:
- a) it is a company duly incorporated under the laws of Canada;
  - b) it is qualified to enter into the Contract and fulfil the obligations and responsibilities incumbent thereunder and to that end, has taken all the necessary or appropriate measures and obtained all the required authorizations;
  - c) it has not entered into any contract, arrangement or agreement with any company, business, natural or artificial person, that would prevent it from fulfilling the obligations under the Contract; and
  - d) it has expressly authorized the senior managers who are signatories to the Contract to accept the obligations stipulated in the Contract and to sign on its behalf.
- 29.2** The Operator agrees not to perform any actions or sign any agreements that are likely to, or that are of a nature that could, question its legal capacity or fulfil its obligations under the Contract.

**29.3** The Operator agrees to provide the Agency, on request, with written evidence satisfactorily establishing that the powers, authorizations and rights set out in subclause 29.1 above have been validly conferred upon their holders.

**Clause 30 – Severability**

**30.1** Any provision of the Contract that a competent court rules invalid, illegal or not possible to execute is severed from the Contract, and the other provisions of the Contract shall remain in force and applicable.

**Clause 31 – Extension**

**31.1** The Operator’s statements, attestations and guarantees, as well as the Operator’s obligations with respect to protecting the Agency against claims and liability, remain applicable and in force following the end of the Contract, whether this occurs through expiration, termination, mutual consent or any other reason, as well as any other provision which it is reasonable to presume, in view of the rights and obligations stipulated therein, that the parties intended to extend.

**Clause 32 – Applicable Law**

**32.1** The Contract, including questions relating to its validity and execution, are governed by the laws in force in the Province of Quebec.

IN WITNESS WHEREOF, THE CONTRACT HAS BEEN SIGNED ON BEHALF OF THE CANADIAN SPACE AGENCY BY THE DULY AUTHORIZED REPRESENTATIVES OF THE MINISTER OF INDUSTRY AND THE DULY AUTHORIZED REPRESENTATIVES OF THE OPERATOR, ATTESTED BY THE COMPANY SEAL.

WITNESSED BY

CANADIAN SPACE AGENCY

[OPERATOR’S NAME]

\_\_\_\_\_  
[Name]  
[Position]

\_\_\_\_\_  
[Name]  
[Position]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date